

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROYAL S. EVANS, JR. and DEPARTMENT OF COMMERCE,
OFFICE OF LABOR EMPLOYEE RELATIONS, Washington, DC

*Docket No. 98-856; Submitted on the Record;
Issued September 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained left knee injury on August 8, 1996 in the performance of duty, causally related to factors of his federal employment.

On March 4, 1997 appellant, then a 51-year-old warehouse worker, filed a claim alleging that on August 8, 1996 he twisted his left knee as he was getting off of a forklift. He did not stop work and the employing establishment controverted appellant's entitlement to continuation of pay. Appellant indicated that he saw Dr. Wayne Fuller, a Board-certified internist, on the date of injury but no medical report regarding his findings that date was submitted to the record.

In support of his claim appellant submitted an August 19, 1996 report of a physical examination that date with an illegible signature, which noted left medial joint line pain. No history of injury was given. An August 19, 1996 x-ray evaluation of the left knee was reported as demonstrating "no evidence of acute bony trauma," and "some minimal spur formation involving the medial compartment and the patellofemoral compartment compatible with degenerative type change."

Appellant also submitted a February 19, 1997 magnetic resonance imaging (MRI) scan report of the left knee with a history noted as "medial knee pain," and which demonstrated a "[t]ear in the posterior horn of the medial meniscus; [n]ot mentioned above but noted is joint space narrowing medially and laterally as well as spurring consistent with osteoarthritis." This examination was noted as being requested by Dr. Bradford W. Tisdale, a Board-certified family practitioner.

By decision dated March 20, 1997, the Office rejected appellant's claim for continuation of pay, finding that he failed to submit his claim for injury within 30 days of the date of injury.

Also, by letter dated March 20, 1997, the Office requested that appellant submit further information in support of his claim including a history of injury, medical history of examination and treatment, and a physician's opinion supporting causal relation.

In response appellant submitted a February 26, 1997 report from Dr. Sandra E. Glasson, a Board-certified orthopedic surgeon, which noted that appellant injured his left knee while working on a forklift in November 1996 and had experienced left knee pain since that time, especially with squatting or twisting. Dr. Glasson noted that the MRI revealed a posterior horn medial meniscus tear "secondary to a work-related injury in November of 1996," and that some diffuse osteoarthritis was evident. Appellant requested authorization for left knee arthroscopic surgery for a partial medial meniscectomy.

The Office again requested further medical information including the records of Drs. Fuller and Tisdale.

With a second request for surgical authorization appellant submitted an April 8, 1997 report from Dr. Glasson which noted that she first saw him on February 26, 1997 for an injury "[h]e sustained ... working on a forklift on August 8, 1996." Dr. Glasson noted that appellant "was evaluated by Dr. Bradford Tisdale following the injury and was sent for an MRI of the left knee ... [which] revealed a posterior horn medial tear." She concurred with the assessment of appellant's condition and opined that he would need to undergo arthroscopic surgery for a partial medial meniscectomy to resolve his pain.

By letter dated May 1, 1997, the Office again advised that they did not have enough medical information to make a decision and it requested previously requested evidence and a statement describing specifically how he injured his knee on the date alleged. However, nothing further was received by the Office.

By decision dated June 20, 1997, the Office rejected appellant's left knee injury claim finding that the factual and medical evidence was not sufficient to establish that his claimed left knee meniscal tear was caused by the work incident on August 8, 1996 as alleged.

Thereafter appellant filed his appeal and submitted further medical evidence attributing appellant's continued left knee pain to an extraarticular problem involving the pes anserine bursa and tendon.¹

The Board finds that appellant has failed to establish that he sustained left knee injury on August 8, 1996 in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim

¹ As this evidence was not before the Office at the time of its most recent final decision, it may not be reviewed by the Board upon this appeal; *see* 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

Appellant has not established the fact of injury in the instant case.

In this case, appellant’s alleged left knee twisting incident was not confirmed by witnesses; he failed to provide confirmation of the injury and failed to file a claim for injury for over seven months following the alleged incident. Appellant further continued to work without documented problems and, although he claimed to have immediately sought medical treatment on the date of injury with Dr. Fuller, he provided no evidence of this examination and treatment or of any other examination and treatment in which a history of injury was given, until February 1997 when Dr. Glasson reported a medial meniscal tear related to a November 1996 employment injury. This history of injury is inconsistent with the injury as alleged by appellant.

Thereafter in April 1997 Dr. Glasson provided a history of injury on August 8, 1996 sustained by appellant “working on a forklift.” The Board notes that this account does not describe how the injury occurred or the specifics of the injury, as alleged, and therefore does not support that the injury specifically occurred as he twisted his left knee while getting off the forklift as alleged.

Appellant has consequently failed to establish that the incident of injury occurred as alleged. Further, none of the medical evidence of record contains any medical rationale supporting an opinion discussing causal relation.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Delores C. Ellyet*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a prima facie case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant’s statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. 10.5(a)(14).

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 20, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 23, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member